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JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

2002 APR -1 A 10:49

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: APRIL 1, 2002
DOCKET NO: RS-00000A-00-0752

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe.
The recommendation has been filed in the form of an Opinion and Order on:

SECURITIES RULEMAKING
(RULEMAKING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

APRIL 10, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

4-25-02
~~APRIL 16, 2002 and APRIL 17, 2002~~

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission
DOCKETED

APR 01 2002

DOCKETED BY	<i>mc</i>
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[Signature]
BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF PROPOSED RULEMAKING
REGARDING TITLE 14, CHAPTER 4, ARTICLE
7 3, OF THE ARIZONA ADMINISTRATIVE CODE.

DOCKET NO. RS-00000A-00-0752

DECISION NO. _____

8 **OPINION AND ORDER**

9 DATE OF HEARING: January 10, 2002

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Teena Wolfe

12 APPEARANCES: Ms. Cheryl T. Farson, General Counsel, on
behalf of the Securities Division of the Arizona
13 Corporation Commission.

14 **BY THE COMMISSION:**

15 On September 19, 2001, the Securities Division ("Division") of the Arizona Corporation
16 Commission ("Commission") forwarded a proposal recommending that the Commission repeal
17 A.A.C. R14-4-301 through A.A.C. R14-4-308 and make new sections A.A.C. R14-4-301 through
18 A.A.C. R14-4-308 ("Article 3") governing the administration of Arizona's securities statutes.¹

19 On October 4, 2001, the Commission issued Decision No. 64083. Decision No. 64083
20 ordered the Hearing Division to set a hearing on this matter, and ordered the Division to forward a
21 Notice of Proposed Rulemaking to the Secretary of State for publication in the Arizona
22 Administrative Register.

23 By Procedural Order of October 12, 2001, a public comment hearing was scheduled to take
24 place on January 10, 2002 at the Commission's offices in Phoenix, Arizona.

25 On October 27, 2000 and October 26, 2001, the Notice of Rulemaking Docket Opening and
26 Notice of Proposed Rulemaking, respectively, were published by the Arizona Secretary of State's

27
28 ¹ The Arizona Securities Act, A.R.S. §§ 44-1901 *et seq.*, and the Arizona Investment Management Act, A.R.S. §§ 44-
3101 *et seq.*

1 office in the Arizona Administrative Register.

2 On January 10, 2002, a public comment hearing was held as scheduled before a duly
3 authorized Administrative Law Judge of the Commission. There were no members of the public or
4 interested parties in attendance at the proceeding, and the Commission has not received any written
5 comments regarding the proposed repeal and remaking of Article 3. At the conclusion of the hearing,
6 the matter was taken under advisement pending the submission of a Recommended Opinion and
7 Order to the Commission.

8 * * * * *

9 Having considered the entire record herein and being fully advised in the premises, the
10 Commission finds, concludes, and orders that:

11 **FINDINGS OF FACT**

12 1. Article 3, along with the Commission's Rules of Practice and Procedure,² governs
13 examinations, investigations, and administrative proceedings conducted under the Arizona Securities
14 Act³ and the Arizona Investment Management Act.⁴

15 2. On September 19, 2001, the Division forwarded to the Commission a proposal
16 recommending the repeal and remaking of Article 3. The Division proposes that the Commission
17 repeal and remake Article 3 to reflect recent statutory changes and to facilitate the administrative
18 process.

19 3. On October 4, 2001, the Commission issued Decision No. 64083, which directed that
20 a hearing be scheduled for the purpose of taking public comment regarding the repeal and remaking
21 of Article 3.

22 4. On October 12, 2001, by Procedural Order, the Commission scheduled a public
23 comment hearing on this matter for January 10, 2002.

24 5. Pursuant to law, Notice of Rulemaking Docket Opening and Notice of Proposed
25 Rulemaking were published on October 27, 2000, and October 26, 2001, respectively, in the Arizona
26 Administrative Register.

27 ² A.A.C. R14-3-101 through R14-3-113.

28 ³ A.R.S. §§ 44-1801 *et seq.*

⁴ A.R.S. §§ 44-3101 *et seq.*

6. On January 10, 2002, a public comment hearing was held as scheduled. No members of the public appeared to provide comment on the proposed repeal and remaking of Article 3 at the public comment hearing.

7.— Subsequent to the publication of the notice of proposed rulemaking, the Commission has not received any written comments with respect to the proposed repeal and remaking of Article 3.

8. The Proposed Article 3 is set forth in Appendix A, attached hereto and incorporated herein by reference.

9. Prepared in accordance with A.R.S. § 41-1055, the Economic, Small Business, and Consumer Impact Statement is attached as Appendix B, attached hereto and incorporated herein by reference.

10. The Concise Explanatory Statement is set forth in Appendix C, attached hereto and incorporated herein by reference.

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. § 44-1821 and Article XV §§ 4, 6, and 13 of the Arizona Constitution, the Commission has jurisdiction to remake A.A.C. R14-4-301 through A.A.C. R14-4-308.

2. Notice of the hearing was given in the manner prescribed by law.

3. The proposed repeal and remaking of A.A.C. R14-4-301 through A.A.C. R14-4-308 is in the public interest.

4. The Economic, Small Business, and Consumer Impact Statement as set forth in Appendix B and the Concise Explanatory Statement as set forth in Appendix C should be adopted.

ORDER

IT IS THEREFORE ORDERED that A.A.C. R14-4-301 through A.A.C. R14-4-308 are hereby repealed, and the proposed A.A.C. R14-4-301 through A.A.C. R14-4-308, as set forth in Appendix A, are hereby adopted.

IT IS FURTHER ORDERED that the Economic, Small Business, and Consumer Impact Statement, as set forth in Appendix B, and the Concise Explanatory Statement, as set forth in Appendix C, are hereby adopted.

1 IT IS FURTHER ORDERED that the Commission's Securities Division shall submit adopted
 2 Rules A.A.C. R14-4-301 through A.A.C. R14-4-308, as set forth in Appendix A; the Economic,
 3 Small Business, and Consumer Impact Statement, as set forth in Appendix B; and the Concise
 4 Explanatory Statement, as set forth in Appendix C; to the Office of the Attorney General for
 5 certification.

6 IT IS FURTHER ORDERED that the Commission's Securities Division is authorized to
 7 make non-substantive changes in the adopted Rules A.A.C. R14-4-301 through A.A.C. R14-4-308
 8 and to the adopted Concise Explanatory Statement in response to comments received from the
 9 Attorney General's office during the approval process under A.R.S. § 41-1044 unless, after
 10 notification of those changes, the Commission requires otherwise.

11 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14
15 CHAIRMAN

COMMISSIONER

COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 18 Secretary of the Arizona Corporation Commission, have
 19 hereunto set my hand and caused the official seal of the
 20 Commission to be affixed at the Capitol, in the City of Phoenix,
 this ____ day of _____, 2002.

21 _____
 22 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

23 DISSENT _____
 24 TW:

1 SERVICE LIST FOR: RULEMAKING TITLE 14, CHAPTER 4, ARTICLE 3

2 DOCKET NO.: RS-00000A-00-0752

3
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5 Assistant Attorney General
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APPENDIX A

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

**ARTICLE 3. PROVISIONS RELATING TO ENFORCEMENT RULES OF PROCEDURE
FOR INVESTIGATIONS, EXAMINATIONS, AND ADMINISTRATIVE PROCEEDINGS**

Section

- R14-4-301 ~~Scope of Article~~ Scope
- R14-4-302 ~~Definitions Article 3~~ Definitions
- R14-4-303 ~~Confidentiality~~ Service
- R14-4-304 ~~Methods of Service of Subpoenas, Notices, Orders, and Other Administrative Documents~~ Rights of Witnesses; Formal Interview; Procedures
- R14-4-305 ~~Rights of Witnesses; Formal Interview; Procedures~~ Answers
- R14-4-306 ~~Notice of an Opportunity for a Hearing and Notice of a Hearing~~ Notices Regarding Hearings
- R14-4-307 ~~Temporary Cease and desist Orders~~ Temporary Orders
- R14-4-308 ~~Rescission and Restitution~~ Rescission and Restitution

ARTICLE 3. PROVISIONS RELATING TO ENFORCEMENT RULES OF PROCEDURE
FOR INVESTIGATIONS, EXAMINATIONS, AND ADMINISTRATIVE
PROCEEDINGS

R14-4-301. ~~Scope of Article~~ Scope ~~This Article applies to investigations and examinations conducted pursuant to the provisions of the Securities Act and the IM Act, and to any orders issued under such acts. When not in conflict with this Article, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.~~

This Article applies to investigations, examinations, and administrative proceedings under the Securities Act and the IM Act. When not in conflict with this Article, the provisions of A.A.C. R14-3-101 through R14-3-113 apply.

R14-4-302. ~~Definitions~~ Article 3 Definitions ~~The following definitions shall apply to this Article 3 unless the context otherwise requires:~~

- ~~1. "Attorney General" means the duly qualified and acting Attorney General of Arizona or the Attorney General's duly appointed assistant.~~
- ~~2. "Division" means the Securities Division of the Arizona Corporation Commission.~~
- ~~3. "Formal interview" means the examination under oath of an individual compelled or requested to testify as part of an investigation or examination.~~
- ~~4. "Hague Convention" means the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, November 15, 1965, 20 U.S. Treaties and Other International Agreements 361, which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of the Hague Convention are available from the Securities Division of the Arizona Corporation Commission and from the Treaty Affairs Section, Office of the Legal Adviser, Department of State, Washington, D.C. 20520.~~

5. ~~"IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.~~

6. ~~"Respondent" means any person who has been captioned in or served a notice or order of the Commission.~~

7. ~~"Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.~~

8. ~~"Unincorporated organization" includes a limited liability company for purposes of the definition of "person", as defined in A.R.S. § 44-1801 (13).~~

The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 and the following definitions apply to this Article 3.

1. "Formal interview" means the examination under oath of an individual compelled or requested to testify as part of an investigation or examination.

2. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.

3. "Respondent" means any person against whom the Division files a complaint, notice, petition, or order.

4. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.

R14-4-303. Confidentiality Service~~All information or documents obtained by officers, employees, or agents of the Commission, including, but not limited to, the shorthand reporter or stenographer transcribing the reporter's notes, in the course of any examination or investigation shall, unless made a matter of public record, be deemed confidential. Officers, employees, and agents are prohibited from making such confidential information available to anyone other than a member, officer or employee of the Commission, agents designated by the Commission or Director, the Attorney General, and law enforcement or regulatory officials, except in~~

~~accordance with any rule of the Commission or unless the Commission or the Director authorizes the disclosure of such information or documents as not contrary to the public interest.~~

- A. Documents required to be served in an administrative proceeding. All pleadings, motions, appearances, orders, and similar papers filed in the record shall be served upon the Division and each respondent to the administrative proceeding by the filing party. Service shall be made by a person at least 18 years of age.
- B. Service on the Division. Service upon the Division may be made by mailing a copy to the Division addressed to the attorney of record for the Division or by delivering a copy to the Division addressed to the attorney of record for the Division.
- C. Service on a respondent represented by an attorney. Whenever service is required or permitted to be made upon a respondent represented by an attorney, the service shall be made by mailing a copy to the last known business or mailing address of the attorney or by any method authorized under subsections (D) and (E).
- D. Service upon individuals. Service upon an individual may be made by any of the following:
1. By personal service.
 2. By leaving a copy at the individual's dwelling, or usual place of abode, with an individual of suitable age and discretion residing therein.
 3. By leaving a copy at the individual's usual place of business or employment with an employee, express or implied agent, supervisor, owner, officer, partner, or other similar individual of suitable age and discretion.
 4. By leaving a copy with an agent authorized by express or implied appointment or by law to receive service of process for the individual upon whom service is being made.

5. By mailing a copy to the last known dwelling, usual place of abode, business address, or mailing address. Subpoenas, notices, and temporary cease-and-desist orders served by mail shall be sent, return receipt requested, by certified mail, express mail, registered mail, or commercial courier or delivery service. The signed return receipt shall constitute proof of service, but shall not be the exclusive method of proving service.

E. Service upon a corporation or other entity. Service upon a corporation, partnership, trust, limited liability company, association, sole proprietorship, or any other entity, may be made by any of the following:

1. By leaving a copy with an employee, of suitable age and discretion, at any place of business of the corporation, partnership, trust, limited liability company, association, sole proprietorship, or other entity.
2. By leaving a copy with any officer or director of a corporation, managing or general partner of a partnership, trustee of a trust, member of a member-managed limited liability company or manager of a manager-managed limited liability company, or any representative of an association or other entity.
3. By leaving a copy with any agent authorized by express or implied appointment or by law to receive service of process for the entity upon whom service is being made.
4. By mailing a copy to the last known business or mailing address. Subpoenas, notices, and temporary cease-and-desist orders served by mail shall be sent, return receipt requested, by certified mail, express mail, registered mail, or commercial courier or delivery service. The signed return receipt shall constitute proof of service, but shall not be the exclusive method of proving service.

F. Service in a foreign country. When serving a subpoena, notice, or temporary cease-and-desist order in a foreign country, service shall be by any internationally agreed means. If service is not accomplished within 120 calendar days from the date service was undertaken under the internationally agreed means or if no internationally agreed means of service has been established or the international agreement does not prohibit the use of other means of service, then service of any document may be made by any of the following:

1. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction.
2. As directed by the foreign authority in response to a letter of request.
3. By any of the following if not prohibited by the law of the foreign country:
 - a. Any method of service authorized by subsections (D) or (E).
 - b. Diplomatic or consular officers when authorized by the United States Department of State.
 - c. By any other lawful method that is reasonably calculated to give notice as directed by the Commission.

G. When service is complete. Service by mail is complete upon mailing. All other service is complete upon delivery.

H. Service by Publication.

1. The Division may serve a person by publication under either of the following circumstances:
 - a. The Division does not know the current address or residence of a person to be served.

- b. The person has avoided service and service by publication is the best means practicable under the circumstances for providing notice of the administrative proceedings.

2. Service by publication shall be made as follows:

- a. The Division shall publish a statement regarding the administrative proceedings at least once a week for four successive weeks in a newspaper published in Maricopa county. If the person's last known residence or place of business was in a different county in Arizona or another state, the Division shall also simultaneously publish the statement in a newspaper published in the different county. If no newspaper is published in the person's last known county of residence or place of business, then the publications shall be made in a newspaper published in an adjoining county.
- b. The published statement shall include the following information:
 - i. The name of the person.
 - ii. The statutes or rules that the Division alleges the person has violated or is violating.
 - iii. The location and the manner in which the person may obtain a copy of the notice or temporary cease-and-desist order being served.
 - iv. The requirement and deadline for filing a request for hearing and the ability of the Commission to enter a default order if the person fails to timely request a hearing.

3. The service shall be complete 30 days after the first publication.

R14-4-304. ~~Methods of Service of Subpoenas, Notices, Orders, and Other Administrative Documents~~ Rights of Witnesses; Formal Interview; Procedures

~~A. Subpoenas, notices, and orders issued pursuant to the Securities Act or the IM Act, and any other documents filed in an administrative proceeding under the Securities Act or the IM Act, may be served by a sheriff, by the sheriff's deputy, by an employee of the Commission, or by any other person who is not less than 18 years of age and who is authorized by the Division or the Commission to serve the Commission's subpoena, notice, order, or other documents filed in the administrative proceeding.~~

~~B. Subpoenas, notices, orders, and other documents filed in an administrative proceeding may be served upon a natural person including, but not limited to, a dealer, salesman, investment adviser, or investment adviser representative, as follows:~~

- ~~1. By personal service.~~
- ~~2. By leaving a copy at the person's dwelling house, or usual place of abode, with a person of suitable age and discretion, but not less than 16 years of age, then residing therein.~~
- ~~3. By leaving a copy at the person's usual place of business or employment with an employee, express or implied agent, supervisor, owner, officer, partner, or other similar person of suitable age and discretion, but not less than 16 years of age.~~
- ~~4. By leaving a copy with an agent authorized by express or implied appointment or by law to receive service of process for the person to whom the subpoena, notice, or order is addressed.~~
- ~~5. By mailing a copy of the subpoena, notice, or order in an envelope addressed to the last known dwelling house or usual place of abode or last known business address. Subpoenas, notices, and temporary cease and desist orders shall be sent postage prepaid, by certified~~

~~mail, with return receipt requested. The signed return receipt shall constitute proof of service of subpoenas, notices, and temporary cease and desist orders but shall not be the exclusive method of proving service. Service of all other orders or other documents filed in the administrative proceeding shall be deemed complete when a copy in an envelope, addressed to the last known dwelling house or usual place of abode or last known business address, is deposited in the United States mail with 1st class postage prepaid.~~

~~C. A subpoena, notice, order, or other document filed in an administrative proceeding may be served upon a corporation, partnership, trust, limited liability company, association, or other business entity, including, but not limited to, a dealer or an investment adviser, as follows:~~

- ~~1. By leaving a copy with an employee, of suitable age and discretion, but not less than 16 years of age, at any place of business of the corporation, partnership, trust, limited liability company, association, or other business entity;~~
- ~~2. By leaving a copy with any officer or director of a corporation, managing or general partner of a partnership, trustee of a trust, member of a member managed limited liability company or manager of a manager managed limited liability company, or any authorized representative of an association or other business entity;~~
- ~~3. By leaving a copy with any agent authorized by express or implied appointment or by law to receive service of process for the entity to whom the subpoena, notice, or order is addressed; or~~
- ~~4. By mailing a copy to the last known business address. Subpoenas, notices, and temporary cease and desist orders shall be sent postage prepaid, by certified mail, with return receipt requested. The signed return receipt shall constitute proof of service of subpoenas, notices, and temporary cease and desist orders but shall not be the exclusive method of proving~~

~~service. Service of all other orders or other documents filed in the administrative proceeding shall be deemed complete when a copy in an envelope, addressed to the last known business address, is deposited in the United States mail with 1st class postage prepaid.~~

~~D. Unless otherwise ordered by the Commission, when a respondent has been served with a notice or a temporary cease and desist order and the respondent is represented by an attorney in the administrative proceeding relating to the notice or the temporary cease and desist order, service upon the respondent shall be made by making service upon the attorney. Service upon the attorney shall be deemed complete when a copy of any amended notice, order, or other documents filed in the administrative proceeding, addressed to the last known business address of the attorney, is deposited in the United States mail with 1st class postage prepaid.~~

~~E. Unless otherwise provided by law, service may be effected in a foreign country:~~

~~1. By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention, provided, however, that if service is not effected within 6 months from the date on which the assistance of the government of the foreign country was requested pursuant to the applicable treaty or convention, service may be effected as directed by the Commission; or~~

~~2. If internationally agreed means of service are unavailable, provided that service is reasonably calculated to give notice:~~

~~a. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or~~

~~b. As directed by the foreign authority in response to a letter rogatory or letter of request; or~~

- ~~e. Unless prohibited by the law of the foreign country, by~~
- ~~i. Delivery of copies of the subpoena, notice, order, or other document filed in the~~
~~administrative proceeding to the party to be served personally; or~~
- ~~ii. Any form of mail requiring a signed receipt, to be addressed and dispatched by the~~
~~Commission to the party to be served; or~~
- ~~iii. Diplomatic or consular officers when authorized by the United States Department of State;~~
~~or~~
- ~~d. If there is no lawful means by which service can be effected in the foreign country, such~~
~~means as the Commission shall direct.~~

A. Any person required or requested to appear as a witness at a formal interview may be represented by a lawyer. The lawyer's role during the formal interview shall be limited to the following activities:

1. Giving legal advice to the witness before, during, and after the formal interview.
2. Questioning the witness briefly at the conclusion of the formal interview for the purpose of clarifying any testimony the witness has given.
3. Making summary notes during the formal interview solely for the use of the witness and the lawyer.

B. Notwithstanding subsection (A), the following lawyers may not represent witnesses at a formal interview:

1. Any lawyer who has represented another witness who has testified at a formal interview in the examination or investigation.
2. Any lawyer who has represented another person who is a subject of the examination or investigation.

3. Any lawyer who may be a material witness in the examination or investigation.
 4. Any lawyer who is a subject of the examination or investigation.
- C. The Director may permit a lawyer to represent a witness in those situations described in subsections (B)(1) through (B)(4) upon a showing that such representation should be permitted in the interest of justice and will not obstruct the examination or investigation. If a lawyer is not permitted to represent a witness under subsection (B), that lawyer's partners or associates of the lawyer's law firm are also precluded from representing the witness.
- D. All formal interviews may be recorded by the Division either mechanically or by a shorthand reporter employed by the Division. No other recording of the formal interview will be permitted, except summary note taking by the attendees.
- E. In addition to the persons identified in subsections (A), (C), and (D), the following individuals may attend a formal interview:
1. Individuals employed by the Commission or the office of the attorney general.
 2. Members of law enforcement or other state, federal, or self-regulatory agencies authorized by the Division.
 3. Translators authorized by the Division.
- F. The Division may exclude from a formal interview any person previously permitted to attend the formal interview, including a lawyer, whose conduct is dilatory, obstructionist, or contumacious. In addition, the members of the staff of the Division conducting the formal interview may report the conduct to the Director for appropriate action. The Director may thereupon take such further action as circumstances may warrant, including, but not limited to, exclusion from further participation in the examination or investigation.

- G. A person who has submitted documentary evidence or testimony in connection with a formal interview shall be entitled, upon written request, and upon proper identification, to inspect the witness' own testimony on a date to be set by the Director. The Director may delay the inspection of the record until the conclusion of the examination or investigation if the Director determines that earlier inspection may obstruct or delay the examination or investigation.
- H. In connection with an examination or investigation, the Director may delegate authority to members of the staff to administer oaths and affirmations, sign subpoenas, take evidence, and receive books, papers, contracts, agreements or other documents, records, or information, whether filed or kept in original or copied form or electronically stored or recorded.
- I. During a formal interview, a witness shall not knowingly make any untrue statements of material fact or omit to state any material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

R14-4-305. Rights of Witnesses; Formal Interview; Procedures Answers

- ~~A. Any person required or requested to appear as a witness at a formal interview may be accompanied, represented, and advised by a lawyer. The lawyer's role during the formal interview shall be limited to the following activities:~~
- ~~1. Giving legal advice to the witness before, during, and after the formal interview;~~
 - ~~2. Questioning the witness briefly at the conclusion of the formal interview for the purpose of clarifying any testimony the witness has given; and~~
 - ~~3. Making summary notes during the formal interview solely for the use of the witness and the lawyer.~~

~~B. Notwithstanding subsection (A), the following lawyers may not represent witnesses:~~

- ~~1. Any lawyer who has represented another witness who has testified at a formal interview in the examination or investigation,~~
- ~~2. Any lawyer who has represented another person who is a subject of the examination or investigation,~~
- ~~3. Any lawyer who may be a material witness in the examination or investigation,~~
- ~~4. Any lawyer who is a subject of the examination or investigation.~~

~~C. The Director may permit a lawyer to represent a witness in those situations described in subsections (B)(1) through (B)(4) upon a showing that such representation should be permitted in the interest of justice and will not obstruct the examination or investigation. If a lawyer is not permitted to represent a witness under subsection (B), that lawyer's partners or associates of the lawyer's law firm are also precluded from representing the witness.~~

~~D. All formal interviews may be recorded by the Division either mechanically or by a shorthand reporter employed by the Division. No other recording of the formal interview will be permitted, except summary note taking.~~

~~E. Unless permitted in the discretion of the Division, no witness or lawyer accompanying such witness shall be permitted to be present during the formal interview of any other witness testifying in a nonpublic examination or investigation. No person not employed by the Commission or the Attorney General shall be present during a formal interview except that the Division may authorize members of law enforcement or other state, federal, or self-regulatory agencies to be present during such formal interview.~~

~~F. The Division may exclude from a formal interview any person previously permitted to attend the formal interview, including a lawyer, whose conduct is dilatory, obstructionist, or~~

~~contumacious. In addition, the members of the staff of the Division conducting the formal interview may report the conduct to the Director for appropriate action. The Director may thereupon take such further action as circumstances may warrant, including, but not limited to, exclusion from further participation in the examination or investigation.~~

~~G. A person who has submitted documentary evidence or testimony in connection with a formal interview shall be entitled, upon written request, and upon proper identification, to inspect the witness' own testimony on a date to be set by the Director. The Director may delay the inspection of the record until the conclusion of the examination or investigation if, in the Director's discretion, the Director determines that earlier inspection may obstruct or delay the examination or investigation.~~

~~H. In connection with an examination or investigation, the Director may delegate authority to members of the staff to administer oaths and affirmations, sign subpoenas, take evidence, and receive books, papers, contracts, agreements or other documents, records, or information, whether filed or kept in original or copied form or electronically stored or recorded.~~

~~I. During a formal interview, a witness shall not knowingly make any untrue statements of material fact or omit to state any material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.~~

A. Within 30 calendar days after the date of service of a notice of an opportunity for a hearing, a respondent who has requested a hearing shall file in the record and serve on the Division an answer to the notice.

B. The answer shall contain the following:

1. An admission or denial of each allegation in the notice.

2. The original signature of the respondent or the respondent's attorney.
- C. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation.
- D. An allegation not denied shall be considered admitted.
- E. When a respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder.
- F. The respondent waives any affirmative defense not raised in the answer.
- G. The officer presiding over the hearing may grant relief from the requirements of this Section for good cause shown.
- H. The notice of an opportunity for a hearing shall state the requirements with which the person served must comply under this rule.

R14-4-306. Notice of an Opportunity for a Hearing and Notice of a Hearing Notices Regarding Hearings

- ~~A. The Commission may issue a notice of an opportunity for a hearing or a notice of a hearing to determine whether to issue a cease and desist order, order of rescission, restitution, or penalties, or other order authorized pursuant to the provisions of the Securities Act or the IM Act.~~
- ~~B. A notice of an opportunity for a hearing and a notice of a hearing shall be served by any method permitted in R14 4 304. A notice of an opportunity for a hearing shall set forth that the respondent will be afforded a hearing upon request to docket control of the Commission if the request is made in writing within 10 days after receipt of the notice by the respondent.~~

~~C. When a respondent requests a hearing pursuant to a notice of an opportunity for a hearing in accordance with the provisions of this rule, the Commission shall set a date, time, and place for the hearing and shall forthwith notify the respondent. The date set for the hearing shall be within 30 days, but not earlier than 15 days, after the written request for hearing has been made, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission.~~

A. The Commission may issue a notice of an opportunity for a hearing or a notice of a hearing to determine whether to issue a cease-and-desist order, order of rescission, restitution, or penalties, or other order authorized pursuant to the provisions of the Securities Act or the IM Act.

B. A notice of an opportunity for a hearing and a notice of a hearing shall be served by any method permitted in R14-4-303. A notice of an opportunity for a hearing shall set forth that the respondent will be afforded a hearing upon request to docket control of the Commission if the request is made in writing within ten days after receipt of the notice by the respondent.

C. When a respondent requests a hearing pursuant to a notice of an opportunity for a hearing in accordance with the provisions of this rule, the Commission shall set a date, time, and place for the hearing and shall forthwith notify the respondent. The date set for the hearing shall be within 60 days, but not earlier than 20 days, after the written request for hearing has been made, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission.

R14-4-307. ~~Temporary Cease-and-desist Orders~~ Temporary Orders

~~A. When the Division determines that the public interest will be harmed by delay in issuing an order to cease and desist, the Division may, with the consent of the Commission, issue a~~

~~temporary cease and desist order which will be in effect for 120 days or until vacated, modified, or made permanent in accordance with this rule, whichever comes 1st.~~

~~B. Temporary cease and desist orders shall be served pursuant to the provisions of R14-4-304.~~

~~C. The temporary cease and desist order shall set forth that the respondent will be afforded a hearing upon request to docket control of the Commission if the request is filed in writing within 20 days of service of the temporary cease and desist order. If a request for a hearing is not filed within 20 days, the Commission may, by written findings of fact and conclusions of law, vacate, modify, or make permanent the temporary cease and desist order.~~

~~D. When a respondent requests a hearing in accordance with the provisions of this rule, the Commission shall set a date, time, and place for the hearing and shall forthwith notify the respondent. The date set for the hearing shall be within 15 days, but not earlier than 5 days, after the written request for hearing has been filed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. The Commission may, after such hearing, by written findings of fact and conclusions of law, vacate, modify, or make permanent the temporary cease and desist order.~~

A. When the Commission determines that the public welfare requires immediate action, the Commission may issue a temporary cease-and-desist order, which will be in effect for 180 days or until vacated, modified, or made permanent in accordance with this rule, whichever comes first. The Commission may delegate this authority to the Director.

B. Temporary cease-and-desist orders shall be served pursuant to the provisions of R14-4-303.

C. The temporary cease-and-desist order shall set forth that the respondent will be afforded a hearing upon request to docket control of the Commission if the request is filed in writing

within 20 days of service of the temporary cease-and-desist order. If a request for a hearing is not filed within 20 days, the Commission may, by written findings of fact and conclusions of law, vacate, modify, or make permanent the temporary cease-and-desist order.

D. When a respondent requests a hearing in accordance with the provisions of this rule, the Commission shall set a date, time, and place for the hearing and shall forthwith notify the respondent. The date set for the hearing shall be within 30 days, but not earlier than ten days, after the written request for hearing has been filed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. The Commission may, after such hearing, by written findings of fact and conclusions of law, vacate, modify, or make permanent the temporary cease-and-desist order.

E. The effective date stated in subsection (A) shall be tolled from the date a hearing is requested until a decision is entered, unless otherwise ordered by the Commission.

R14-4-308. ~~Rescission and Restitution~~ Rescission and Restitution

~~A. Where there has been a violation of the Securities Act or the IM Act, or any rule or order of the Commission, the person or persons responsible for the violation may be required, pursuant to the Securities Act or the IM Act, to make rescission and/or restitution as provided herein.~~

~~B. Where a rescission offer is ordered by the Commission,~~

~~1. The following materials must be filed with and receive prior approval from the Director before distribution to the purchasers:~~

- a. ~~A written offer to repurchase stating in reasonable detail the facts out of which liability arose and, in the event of a violation of A.R.S. §§ 44-1991, 44-1992, or 44-3241, the correct, true, or omitted facts.~~
- b. ~~An offer to repurchase the security shall include an offer of:~~
 - i. ~~Cash (or, if the Commission determines it is in the public interest, other property) equal to the fair market value of the consideration paid (determined as of the date such payment was originally paid by the buyer) or such lesser amount as shall be ordered by the Commission (if it determines that it is in the public interest to order such lesser amount); together with~~
 - ii. ~~Such amount or rate of interest as shall be ordered by the Commission for the period from the date of purchase payment to the date of repayment; less~~
 - iii. ~~The amount of any principal, interest, or other distributions received on the security for the period from the date of purchase payment to the date of repayment.~~
- c. ~~The offer to repurchase shall be accompanied by a prospectus and other documents making full written disclosure about the financial and business condition of the issuer and the financial and business risks associated with the retention of the securities and contain any such further information as the Commission may require.~~
- d. ~~The offer to repurchase shall state that such offer may be accepted by the purchaser at any time within a specified period of not less than 30 days after the date of receipt thereof unless a shorter period of time is ordered by the Commission.~~
- 2. ~~The offer and any other materials required to be presented to the purchaser shall be made within a period specified by the Commission.~~
- 3. ~~Financial statements prepared in accordance with R14-4-120, A.R.S. § 44-3159, or other appropriate documentation as requested by the Director or the Commission, shall be~~

~~provided to the Director. The financial statements or documentation shall demonstrate that the person or persons funding the rescission offer has or have adequate funds to pay the amount ordered pursuant to subsection (B)(1)(b) to all purchasers of the securities who are eligible to accept the rescission offer. The funding of the rescission offer may be provided by the seller, issuer, or other 3rd party.~~

- ~~4. The Commission may order that funds be deposited in escrow as the Commission deems necessary.~~
- ~~5. When the rescission offer has been completed and the appropriate funds paid, the person funding the rescission offer must verify to the Director that the rescission offer was made in accordance with this rule. The verification may be performed by an independent 3rd party, such as an accountant or escrow agent, and by providing the pertinent records documenting the rescission offer to the Director. The following information must be included unless otherwise ordered by the Commission:~~
 - ~~a. Names, addresses, and telephone numbers of all securities holders of the issuer who had a right to receive the rescission offer, the amount and purchase dates of securities held by such securities holders, and the amount of principal, interest, or other distributions on all securities held by such securities holders;~~
 - ~~b. Names, addresses, and telephone numbers of all securities holders of the issuer who did not receive the rescission offer and the reason why they did not receive the rescission offer, the amount and purchase dates of securities held by such securities holders, and the amount of principal, interest, or other distributions on all securities held by such securities holders;~~
 - ~~c. Verification of receipt of the rescission offer by all securities holders who had a right to and did receive the rescission offer;~~

- ~~d. A list of securities holders who accepted the rescission offer and those who did not accept;~~
- ~~e. Verification of payment of principal and interest ordered to be paid to all such securities holders who accepted the rescission offer.~~
- ~~C. Where restitution is ordered by the Commission,~~
 - ~~1. The amount payable as damages to each purchaser shall include the amount computed under subsection (B)(1)(b) less the amount of any sale proceeds received on disposal of the security if it was sold at any time by the purchaser.~~
 - ~~2. Financial statements prepared in accordance with R14-4-120, A.R.S. § 44-3159, or other appropriate documentation as requested by the Director or the Commission, shall be provided to the Director. The financial statements or documentation shall demonstrate that the person paying restitution has adequate funds to pay all purchasers the amount computed in subsection (C)(1).~~
 - ~~3. The Commission may order that funds be deposited in escrow as the Commission deems necessary.~~
 - ~~4. The Commission may order the respondent to provide the following information to the Division:~~
 - ~~a. Names, addresses, and telephone numbers of all securities purchasers who had a right to receive restitution under the Commission's order; amount and purchase dates of securities purchased by such purchasers; fair market value of any non-cash consideration received by respondent from each purchaser of such securities; and any payment of principal, interest, or any other distribution on such security.~~
 - ~~b. Verification of payment of principal and interest ordered to be paid to all such purchasers.~~

A. When a person or persons have violated the Securities Act or the IM Act, or any rule or order of the Commission, the Commission may require the person or persons to make rescission and/or restitution as provided herein.

B. If a rescission offer is ordered by the Commission,

1. The respondent shall submit the following materials to the Division and, upon approval from the Director, distribute the materials to the purchasers:

a. A written offer to repurchase stating in reasonable detail the facts out of which liability arose and, in the event of a violation of A.R.S. §§ 44-1991, 44-1992, or 44-3241, the correct, true, or omitted facts. An offer to repurchase the security shall include an offer of:

i. Cash equal to the fair market value of the consideration paid, determined as of the date such payment was originally paid by the buyer; together with

ii. Interest at a rate pursuant to A.R.S. § 44-1201 for the period from the date of the purchase payment to the date of repayment; less

iii. The amount of any principal, interest, or other distributions received on the security for the period from the date of purchase payment to the date of repayment.

b. The offer to repurchase shall be accompanied by a prospectus and other documents making full written disclosure about the financial and business condition of the issuer and the financial and business risks associated with the retention of the securities.

- c. The offer to repurchase shall state that such offer may be accepted by the purchaser at any time within a specified period of not less than 30 days after the date of receipt thereof.
2. The offer and any other materials required to be presented to the purchaser shall be made within a period specified by the Commission.
3. Financial statements prepared in accordance with R14-4-120, A.R.S. § 44-3159, or other documents relating to the business of the respondent as requested by the Director or the Commission, shall be provided to the Director. If a respondent demonstrates that it cannot obtain audited financial statements without unreasonable effort or expense, then the respondent shall provide to the Director a notarized statement of financial condition. The financial statements or documentation shall demonstrate that the person or persons funding the rescission offer has or have adequate funds to pay the amount ordered pursuant to subsection (B)(1)(a) to all purchasers of the securities who are eligible to accept the rescission offer. The seller, issuer, or other third party may fund the rescission offer.
4. The Commission may order that funds be deposited in escrow.
5. When the rescission offer has been completed and the appropriate funds paid, the person funding the rescission offer shall verify to the Director that the rescission offer was made in accordance with this rule. The verification may be performed by an independent third party, such as an accountant or escrow agent, by providing the pertinent records documenting the rescission offer to the Director. All of the following information must be included:

- a. Names, addresses, and telephone numbers of all securities holders of the issuer who had a right to receive the rescission offer, the amount and purchase dates of securities held by such securities holders, and the amount of principal, interest, or other distributions on all securities held by such securities holders.
- b. Names, addresses, and telephone numbers of all securities holders of the issuer who did not receive the rescission offer and the reason why they did not receive the rescission offer, the amount and purchase dates of securities held by such securities holders, and the amount of principal, interest, or other distributions on all securities held by such securities holders.
- c. Verification of receipt of the rescission offer by all securities holders who had a right to and did receive the rescission offer.
- d. A list of securities holders who accepted the rescission offer and those who did not accept.
- e. Verification of payment of principal and interest ordered to be paid to all such securities holders who accepted the rescission offer.
6. Based on the circumstances of the respondent and the purchasers, if necessary or appropriate to the public interest and consistent with the protection of the investors, the Commission may prescribe by order alternative rescission offer terms, including:
 - a. The offer of other identified assets in lieu of cash if the respondent lacks sufficient cash to offer the amount required under subsection (B)(1)(a).
 - b. The offer of a specified lesser amount than the amount required under subsection (B)(1)(a) if the respondent lacks sufficient assets to offer the amount required under subsection (B)(1)(a).

- c. The inclusion in the repurchase offer of information material to an understanding of the issuer, in addition to that required by subsection (B)(1)(b), if such information would be required if the securities were being registered.
- d. A shorter period of time during which the offer to repurchase may be accepted.
- e. Waiver of specified information required by subsection (B)(5) if the Commission determines that producing such information will be unduly burdensome.

C. If restitution is ordered by the Commission,

1. The amount payable as damages to each purchaser shall include:

- a. Cash equal to the fair market value of the consideration paid, determined as of the date such payment was originally paid by the buyer; together with
- b. Interest at a rate pursuant to A.R.S. § 44-1201 for the period from the date of the purchase payment to the date of repayment; less
- c. The amount of any principal, interest, or other distributions received on the security for the period from the date of purchase payment to the date of repayment.

2. Financial statements prepared in accordance with R14-4-120, A.R.S. § 44-3159, or other documents relating to the business of the respondent as requested by the Director or the Commission, shall be provided to the Director. If a respondent demonstrates that it cannot obtain audited financial statements without unreasonable effort or expense, then the respondent shall provide to the Director a notarized statement of financial condition. The financial statements or documentation shall demonstrate that the person paying restitution has adequate funds to pay all purchasers the amount computed in subsection (C)(1).

3. The Commission may order that funds be deposited in escrow.
4. The Commission may order the respondent to provide the following information to the Division:
 - a. Names, addresses, and telephone numbers of all securities purchasers who had a right to receive restitution under the Commission's order; amount and purchase dates of securities purchased by such purchasers; fair market value of any non-cash consideration received by respondent from each purchaser of such securities; and any payment of principal, interest, or any other distribution on such security.
 - b. Verification of payment of principal and interest ordered to be paid to all such purchasers.
5. Based on the circumstances of the respondent and the purchasers, if necessary or appropriate to the public interest and consistent with the protection of the investors, the Commission may prescribe by order alternative restitution terms, including:
 - a. The payment of other identified assets in lieu of cash if the respondent lacks sufficient cash to pay the amount required under subsection (C)(1).
 - b. The payment of a specified lesser amount than required under subsection (C)(1) if the respondent lacks sufficient assets to meet the subsection (C)(1) requirement.

APPENDIX B

**Arizona Corporation Commission, Securities Division
Chapter 4, Corporation Commission—Securities
Article 3. Rules of Procedure for Investigations, Examinations,
and Administrative Proceedings**

Economic, Small Business, and Consumer Impact Statement

A. Economic, small business, and consumer impact summary.

1. Proposed rulemaking.

The Arizona Corporation Commission (the "Commission") repeals Sections R14-4-301 through R14-4-308 ("repealed Article 3") and makes Sections R14-4-301 through R14-4-308 ("Article 3").

2. Summary of information included in this report.

The economic, small business, and consumer impact statement for Article 3 analyzes the costs and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public.

The benefits provided by Article 3 are nonquantifiable. Article 3 should benefit the Commission's relations with the regulated public because of increased clarity regarding administrative processes and procedures. The public will benefit from the cost and time savings inherent in clear, concise, and consistent practices. Article 3 will not materially increase monitoring, record keeping, or reporting burdens on businesses or persons. The making of Article 3 does not materially increase the costs of implementation or enforcement.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in this statement.

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B. Economic, small business, and consumer impact statement

The Arizona Corporation Commission (the "Commission") has not conducted any study and is not aware of any study that measures the cost of implementation or compliance with Article 3. The time and dollar expenditures necessary to obtain such data are prohibitive. Adequate data, therefore, is not reasonably available to provide quantitative responses to the items required under A.R.S. § 41-155(B).

1. Proposed rulemaking.

The Arizona Corporation Commission (the "Commission") repeals Sections R14-4-301 through R14-4-308 ("repealed Article 3") and makes Sections R14-4-301 through R14-4-308 ("Article 3") in order to: (i) delete repetitive provisions that are contained in the Arizona Securities Act or the Investment Management Act (the "Acts"); (ii) clarify and simplify provisions; (iii) include a provision governing answers by respondents; and (iv) change the provisions governing temporary cease-and-desist orders to better reflect the interests of all parties. A brief description of Article 3 follows:

A.A.C. R14-4-301 describes the scope of Article 3. When not in conflict with Article 3, the provisions of A.A.C. R14-3-101 through R14-3-113 also apply to administrative processes under the Acts.

A.A.C. R14-4-302 contains definitions relevant to Article 3.

A.A.C. R14-4-303 prescribes methods of service, including service by publication under specified conditions.

A.A.C. R14-4-304 enumerates the rights of witnesses and the procedures for formal interviews.

A.A.C. R14-4-305 requires that a respondent who has requested a hearing file an answer within 30 calendar days after the date of service of a notice of opportunity.

A.A.C. R14-4-306 contains the process regarding a notice of opportunity for a hearing and a notice of hearing. The time frame for setting a hearing is within 60 days, but not earlier than 20 days, after the written request for hearing has been made.

A.A.C. R14-4-307 provides the process regarding a temporary cease-and-desist order. The effective term of a temporary cease-and-desist is 180 days. The time frame for setting a hearing is within 30 but no earlier than 10 days after a written request for a hearing is filed.

A.A.C. R14-4-308 contains the requirements that must be met when a rescission or restitution is ordered by the Commission, unless otherwise ordered.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

Those affected by Article 3 are persons who are subject to the jurisdiction of the Commission under the Acts and who participate in examinations, investigations, or administrative procedures.

Cost bearers.

The costs of compliance with Article 3 will be borne directly by the regulated persons, the Commission, and the office of the attorney general. The costs of enforcement of Article 3 will be borne by the Commission and the office of the attorney general. The costs of implementation of Article 3 will be borne by the Commission.

The costs of compliance and enforcement are not materially impacted by the repeal and remaking of Article 3. The Commission anticipates that the procedural requirements contained

in Article 3 will reduce overall expenditure of resources because the requirements are designed to define the issues and facilitate the administrative process. The Commission anticipates that the proposed rulemaking will not increase monitoring, record keeping, or reporting burdens on businesses or persons. The costs of implementation are minimal because the material provisions of Article 3 are substantially the same as repealed Article 3.

Beneficiaries.

Article 3 should benefit the Commission's relations with regulated persons because of increased clarity regarding administrative processes and procedures. The public will benefit from the cost and time savings inherent in clear, concise, and consistent practices.

3. Cost/benefit analysis.

a. Cost/benefit analysis of the probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The benefits of Article 3 outweigh the probable costs. The implementation costs to the Commission are minimal because the systems, forms, etc., implemented in connection with Article 3 will not vary materially from those in connection with repealed Article 3. The costs to the Commission and the office of the attorney general to enforce Article 3 remain substantially the same as the costs incurred to enforce repealed Article 3. The public, the Commission, and the office of the attorney general will benefit from the changes in Article 3, which (i) delete repetitive provisions that are contained in the Acts; (ii) clarify and simplify provisions; (iii) include a provision governing answers by respondents; and (iv) change the provisions governing temporary cease-and-desist orders to better reflect the interests of all parties.

b. Cost/benefit analysis of the probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

None.

c. Cost/benefit analysis of the probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The benefits of Article 3 outweigh the probable costs. The Commission anticipates that the costs of compliance by regulated persons either will be substantially the same as those incurred in connection with compliance with repealed Article 3 or will be reduced by the efficiencies reflected in the procedural requirements. The Commission does not anticipate any effect on the revenues or payroll expenditures of regulated persons.

Regulated persons should benefit from the changes to Article 3, which (i) delete repetitive provisions that are contained in the Arizona Securities Act or the Investment Management Act (the "Acts"); (ii) clarify and simplify provisions; (iii) include a provision governing answers by respondents; and (iv) change the provisions governing temporary cease-and-desist orders to better reflect the interests of all parties.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

The Commission anticipates that the impact of Article 3 on public and private employment will be minimal because Article 3 incorporates in large part benefits and requirements contained in repealed Article 3.

5. Statement of the probable impact of the proposed rulemaking on small businesses.

a. An identification of the small businesses subject to the proposed rulemaking.

Regulated persons are subject to Article 3. Small businesses that engage in the offer or sale of securities or investment advisory services are subject to Article 3.

b. The administrative and other costs required for compliance with the proposed rulemaking.

Article 3 describes the rights and obligations of persons participating in examination, investigation, and administrative procedures under the Acts. The Commission anticipates that the administrative and other costs required for compliance with Article 3 will be lower than those that may be incurred without the benefit of clear, concise, and consistent rules of procedure.

c. A description of the methods that the agency may use to reduce the impact on small businesses.

Rules of procedure generally, and Article 3 specifically, are designed to improve time and cost efficiency throughout examination, investigation, and administrative procedures. Article 3 only imposes on regulated persons, which may include small businesses, that regulation deemed necessary and appropriate to effectively administer the Acts.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Nonregulated persons and consumers will bear no direct cost as a result of Article 3. Taxpayers and persons who conduct or have conducted business with regulated persons may benefit, directly or indirectly, from effective and efficient administration of examination, investigation, and administrative proceedings.

6. Statement of the probable effect on state revenues.

Article 3 has a beneficial effect on state revenues because clear, concise, and consistent procedures improve time and cost efficiency.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The goal of Article 3 is to effectuate the least intrusive and costly method of regulation under the Acts to achieve the statutorily mandated level of public protection.

APPENDIX C

CONCISE EXPLANATORY STATEMENT

This explanatory statement is provided to comply with the provisions of A.R.S. § 41-1036.

I. CHANGES IN THE TEXT OF THE PROPOSED RULEMAKING FROM THAT CONTAINED IN THE NOTICE OF PROPOSED RULEMAKING FILED WITH THE SECRETARY OF STATE.

None.

II. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED RULES, INCLUDING A RESPONSE TO COMMENTS RECEIVED ON THE PROPOSED RULES AND ANY SUPPLEMENTAL NOTICES.

The proposed rulemaking repeals A.A.C. R14-4-301 through R14-4-308 and makes new sections R14-4-301 through R14-4-308 ("Article 3"). The Notice of Rulemaking Docket Opening was published in the Arizona Administrative Register on October 27, 2000. The Notice of Proposed Rulemaking was published on October 27, 2001. An oral proceeding was scheduled and notice regarding the proceeding was included in the Notice of Proposed Rulemaking. The proceeding was held as scheduled. No oral or written comments were received by the Commission from the public.

Issue: Whether to repeal A.A.C. R14-4-301 through R14-4-308 make a new Article 3.

Analysis: A.A.C. R14-4-301 through R14-4-308, along with the Commission's rules of practice and procedure, govern examinations, investigations, and administrative proceedings conducted under the Securities Act and Investment Management Act. The Commission proposes to repeal A.A.C. R14-4-301 through R14-4-308 and makes a new Article 3 to reflect recent statutory changes and to facilitate the administrative process.

The new Article 3 substantively differs from the repealed sections as follows:

The confidentiality requirements contained in former R14-4-303 are not contained in the new Article 3 because those requirements are now contained in § 44-2042 of the Arizona Securities Act and § 44-3300 of the Investment Management Act.

In R14-4-303, the new Article 3 contains a method of service by publication if the current address is not known or the person has avoided service and publication is the best means practicable to serve the person. This method of service is patterned after that contained in the Arizona Rules of Civil Procedure and enhances the ability of the Commission to fulfill its regulatory mandate.

In R14-4-305, the new Article 3 contains a new requirement that respondents who request a hearing file an answer to the notice of opportunity for a hearing. An answer to the averments contained in the notice will expedite the administrative process by identifying and framing the contested issues. Additionally, an answer will facilitate an efficient use of both Commission and respondent resources by allowing them to focus on the contested issues. The officer presiding over the hearing may grant relief from this requirement for good cause shown.

In R14-4-306, the new Article 3 reflects a change in the time frames regarding the issuance of notice to coincide with the time frames mandated in §§ 44-1972 and 44-3212.

In R14-4-307, the new Article 3 reflects a change in the standard for issuance of a temporary cease and desist order to conform with the standard stated in §§ 44-1972 and 44-3212. Additionally, the effective date of a temporary order is tolled from the date a hearing is requested until a decision is entered, unless otherwise ordered by the Commission. The tolling provision allows the parties to pursue the administrative process and prepare their arguments and defenses without injudicious expedition simply to conclude the proceedings prior to termination of the temporary cease and desist. If appropriate, the Commission may terminate the tolling.

In R14-4-308, the new Article 3 includes ascertainable standards to provide guidance to the public and the Commission regarding the exercise of discretion in connection with an order of rescission or restitution.

The substantive changes to the rules governing the examinations, investigations, and administrative proceedings conducted under the Securities Act and Investment Management Act are beneficial to the interests of all parties involved by improving the efficiency and clarity of the process. The Commission received informal comments prior to noticing the proposed rules, and incorporated those comments in the Commission's proposed new Article 3. After the publication of the proposed repeal of A.A.C. R14-4-301 through R14-4-308 and remaking of Article 3, the Commission received no oral or written comments thereon.

Resolution: A.A.C. R14-4-301 through R14-4-308 should be repealed and the new Article 3 should be adopted.